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# Insurance

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# Insurance

## Insurance; proof of insurance

Insurance Code §11580.10 (new and repealed); Penal Code §1463.22 (new); Vehicle Code §4152.5 (new and repealed); §§16028, 16029, 16030, 16031, 16032, 16033, 16034, 16035 (new and repealed); §§6700, 6701, 6702, 6703 (new and repealed); §6850 (amended).

SB 850 (Robbins); 1984 STAT. Ch 1322

(Effective July 1, 1985)

Under existing law, owners<sup>1</sup> and drivers<sup>2</sup> of motor vehicles<sup>3</sup> are required to maintain at all times one form of financial responsibility.<sup>4</sup> The enforcement of existing law, however, only occurs when the driver is involved in an accident.<sup>5</sup> Chapter 1322 additionally requires persons, when stopped by a peace officer for a traffic violation,<sup>6</sup> to provide proof of financial responsibility.<sup>7</sup> With the enactment of Chapter 1322, providing erroneous evidence of financial responsibility will result in a suspension of the driver's license.<sup>8</sup> This suspension, however, does

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1. CAL. VEH. CODE §460 (definition of owner).

2. *Id.* §305 (definition of driver).

3. *Id.* §415; CAL. INS. CODE §11580.06(a) (definition of motor vehicle).

4. CAL. VEH. CODE §16020. Financial responsibility of the driver or owner is established if the driver or owner of the vehicle is (1) a self-insurer; (2) an insured or obligee under a form of insurance or bond; (3) the United States of America, California, any municipality thereof, or the lawful agent thereof; (4) a depositor; or (5) in compliance with the requirements authorized by the department of motor vehicles by any other manner that effectuates the purposes of the financial responsibility law. *See id.* §16021. *See also Review of Selected 1983 Legislation*, 15 PAC. L.J. 645, 646 (1984) (uninsured motorist legislative action).

5. CAL. VEH. CODE §16022. Prior law allowed the uninsured motorist "one free accident." *Id.* *See* Press Release, Assemblyman Phil Wyman, June 12, 1984 (copy on file at the *Pacific Law Journal*). *See* CAL. VEH. CODE §16000 (type of accident).

6. Any traffic violation except a violation specified in CAL. VEH. CODE §§22500-22524 (prohibition of stopping, standing, or parking). *Id.* §16028(c).

7. *Id.* §16028(a). "Evidence of financial responsibility" is either (1) the name of the insurance or surety company that issued the automobile liability policy, motor vehicle liability policy, or bond and the number of the insurance policy or surety bond; or (2) the certificate or deposit number issued by the department if the owner is a self-insurer or a depositor. *Id.* §16028(b)(1). Violations are punished as infractions by a fine of \$75 or the court may permit the defendant, in lieu of the fine, to perform community service. *Id.* §16028(a).

8. *Id.* §16030(c). The suspension remains in effect until the establishment of financial responsibility or until three years from the commencement of the suspension, whichever occurs

not apply to drivers of motor vehicles owned, operated, or leased by their employer and driven with permission of the employer.<sup>9</sup> Chapter 1322 requires dismissal of charges against any person who is cited for not producing evidence of financial responsibility and who can later show evidence of financial responsibility as of the date the notice to appear was issued.<sup>10</sup>

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first. *Id.* See *id.* §310 (definition of driver's license).

9. *Id.* §16030(c).

10. *Id.* §16028(d) (evidence showing financial responsibility must be shown to the court clerk).

## Insurance; uninsured motorist coverage

Insurance Code §11580.26 (amended).  
SB 2008 (Mello); 1984 STAT. CH 263  
(Effective June 29, 1984)

Prior law provided that a motor vehicle<sup>1</sup> liability insurance policy could not be issued unless the insured<sup>2</sup> had been offered (1) uninsured vehicle collision coverage, and (2) uninsured vehicle property damage coverage.<sup>3</sup> Chapter 263 now provides that *bodily*<sup>4</sup> insurance covering liability arising out of the ownership, maintenance, or use of any motor vehicle cannot be issued unless the uninsured vehicle collision and property damage coverage also is offered.<sup>5</sup> In the event a policy included property damage coverage, prior law had limited payment for loss or damage to the insured vehicle<sup>6</sup> to a maximum of \$3,500.<sup>7</sup> Chapter 263 specifies, however, that the damage payment is not to exceed \$3,500 or the cash value, whichever is less.<sup>8</sup>

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1. CAL. VEH. CODE §415; CAL. INS. CODE §11580.06(a) (definition of motor vehicle).

2. CAL. INS. CODE §11580.6(b) (definition of insured).

3. 1983 Cal. Stat. c. 1252, §1, at \_\_\_\_ (adding and repealing CAL. INS. CODE §11580.26) (the provision are applicable only to those policies issued on or after July 1, 1984). See *Review of Selected 1983 California Legislation*, 15 PAC. L.J. 645 (1984) (review of Chapter 1252).

4. CAL. INS. CODE §§11580.06(c), 11580.2(b) (definitions of bodily injury liability insurance).

5. *Id.* §11580.26(a). These provisions, however, do not apply to policies providing insurance in the Republic of Mexico issued or delivered in this state by a nonadmitted Mexican insurer or policies insuring a commercial vehicle as defined in section 260 of the Vehicle Code. *Id.*

6. *Id.* §11580.26(a) (definition of insured vehicle).

7. 1983 Cal. Stat. c. 1252, §1, at \_\_\_\_ (adding and repealing CAL. INS. CODE §11580.26).

8. CAL. INS. CODE §11580.26(a)(2). Property damage does not include compensation for loss of use of the motor vehicle. *Id.* Chapter 263 specifies that payments for the property damages are payable under the terms of the policy. *Id.* §11580.26(b).

Under existing law, an insurer is required to make payments under either the uninsured vehicle collision or property damage coverage plans when (1) the collision involves actual, direct physical contact between the insured and uninsured vehicles,<sup>9</sup> (2) the owner or operator of the uninsured vehicle is identified by its license number,<sup>10</sup> (3) the accident is reported to the insurer or agent of the insurer within three business days,<sup>11</sup> and (4) a determination is made by the insured and the insurer, or by a single neutral arbitrator when there is a dispute, that the insured is entitled to recover payments for property damage caused by the collision with an uninsured vehicle.<sup>12</sup> Chapter 263 adds the provision that, in the event of a disagreement, any arbitration agreement proceedings instituted by the insured must be within one year of the accident.<sup>13</sup>

Existing law provides that any named insured may elect not to accept additional coverage<sup>14</sup> for uninsured vehicles.<sup>15</sup> With the enactment of Chapter 263, the insured also may waive the coverage for any person or persons designated by name.<sup>16</sup>

Prior law provided that the insurer's liability for a claim, under an uninsured vehicle collision provision, may be subrogated to the rights of the insured against any other person legally liable for death or injury.<sup>17</sup> Chapter 263, however, provides that the insurer's liability may be subrogated to the rights of the insured only against any person legally liable for the damage done to the insured vehicle.<sup>18</sup>

Chapter 263 additionally imposes a duty on the insurer to notify the insured, making a claim on uninsured vehicle coverage, of the statute of limitation applicable to property damage.<sup>19</sup> In the event notice is not given, Chapter 263 authorizes the tolling of the statute of limitation.<sup>20</sup>

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9. CAL. INS. CODE §11580.26(b).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Compare id. with* 1983 Cal. Stat. c. 1252, §1, at \_\_\_\_ (repealing and enacting CAL. INS. CODE §11580.26).

14. CAL. INS. CODE §11580.26(c).

15. *Id.* (additional coverage).

16. *Id.* The election is binding, however, upon every insured to whom the policy or endorsement provisions apply while the policy is in force. *Id.*

17. 1983 Cal. Stat. c. 1252, §1, at \_\_\_\_ (adding and repealing CAL. INS. CODE §11580.26).

18. *Compare* CAL. INS. CODE §11580.26(d) *with* 1983 Cal. Stat. c. 1252, §1, at \_\_\_\_ (adding and repealing CAL. INS. CODE §11580.26).

19. CAL. INS. CODE §11580.26(g). The notification must be given 30 days before the expiration of the statute of limitation. *Id.*

20. *Id.* Failure to provide proper notice will toll the statute of limitation until 30 days after actual notice is given. Notice is not required if the insurer has received notice that the insured is represented by an attorney. *Id.*

## Insurance; underinsured motorist coverage

Insurance Code §11580.2 (amended).  
AB 3984 (Connelly); 1984 STAT. Ch 1493

Existing law requires a motor vehicle<sup>1</sup> insurance policy covering bodily injury<sup>2</sup> to contain a provision or endorsement for uninsured motorist protection.<sup>3</sup> To recover under an uninsured motorist provision or endorsement, the defendant must satisfy the definition of an uninsured motorist.<sup>4</sup> Under existing law, a motorist is considered uninsured when no bodily liability insurance or bond exists, or if insurance exists but the insurer (1) denies coverage or refuses to admit coverage except conditionally or with reservations, or (2) the insurer is unable to make payment because of insolvency occurring within one year of the accident.<sup>5</sup> Under California case law, uninsured motorist protection has been extended to include *underinsured* offending vehicles.<sup>6</sup>

Chapter 1493 expands the statutory definition of uninsured motor vehicles.<sup>7</sup> An underinsured vehicle is defined as one that is insured in an amount that is less than the bodily injury liability limits carried on the vehicle of the injured person.<sup>8</sup> Therefore, in an action by an insured for a declaration of rights under the insurance policy, an offending underinsured motorist will be considered an uninsured motorist within the meaning of the Insurance Code.<sup>9</sup>

Chapter 1493 provides specific provisions with which to govern underinsured motorist cases.<sup>10</sup> Chapter 1493 requires the applicable underinsured vehicle's liability policy to be exhausted by payment of

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1. CAL. INS. CODE §11580.06(a) (definition of motor vehicle).

2. *Id.* §11580.06(c) (definition of bodily injury).

3. *Id.* §11580.2(a)(1). The provision must cover both the insured and the heirs or legal representative of the insured. *Id.* See *Review of Selected 1983 California Legislation*, 15 PAC. L.J. 648 (1984).

4. See CAL. INS. CODE §11580.2.

5. *Id.* §11580.2(b); see also 4 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Uninsured Motorist Coverage* §775 (8th ed. 1974) (application of CAL. INS. CODE §11580.2(b)).

6. *Kirkley v. State Farm Mut. Ins. Co.*, 17 Cal. App. 3d 1078, 1081, 95 Cal. Rptr. 427, 429 (1971); see also *Taylor v. Preferred Risk Mut. Ins. Co.*, 225 Cal. App. 2d 80, 82, 37 Cal. Rptr. 63, 64 (1964); *Calhoun v. State Farm Mut. Auto. Ins. Co.*, 254 Cal. App. 2d 407, 409, 62 Cal. Rptr. 177, 178 (1967).

7. Compare CAL. INS. CODE §11580.2(a)(2) with *id.* §11580.2(p). Chapter 1493 requires underinsured motorist coverage to be offered with limits at least equal to the limits on liability for the insured's uninsured motorist limits in the underlying policy, however, coverage may be offered with limits in excess of the uninsured motorist coverage. CAL. INS. CODE §11580.2(n).

8. CAL. INS. CODE §11580.2(p); CAL. VEH. CODE §16056 (financial responsibility requirements).

9. CAL. INS. CODE §11580.2

10. *Id.* §11580.2(p).

judgments or settlements before underinsured motorist coverage is applied.<sup>11</sup> Chapter 1493 also provides that an insurer paying a claim of underinsured motorist coverage is entitled to reimbursement or credit in the amount received by the insured from the owner of the underinsured vehicle.<sup>12</sup> Lastly, if the insured brings an action against the underinsured motorist, a copy of the complaint must be given to the insurer.<sup>13</sup>

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11. *Id.* §11580.2(p)(3).

12. *Id.* §11580.2(p)(5).

13. *Id.* §11580.2(p)(6).

## Insurance; assigned risk plans

Insurance Code §11624.6 (new).

SB 1449 (Robbins); 1984 STAT. Ch 1122

Existing law provides an assigned risk plan<sup>1</sup> for applicants for automobile bodily injury and property damage liability insurance who are in good faith entitled to procure the insurance but are unable to through ordinary methods.<sup>2</sup> Chapter 1122 permits an agent, broker, or insurer to which an application has been assigned, to conclusively rely upon the validity of any signatures within the application accepting or waiving provided coverages.<sup>3</sup> In addition, Chapter 1122 allows the assignee to set the insurance limits and deductibles as stated in the application.<sup>4</sup>

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1. CAL. INS. CODE §§11620-11627 (assigned risk plans). The assigned risk plan requires all insurance companies writing liability policies to accept a share of approved assigned risk applications and to provide the required insurance. *Id.*

2. *Id.* §11620. *See also* Fireman's Fund American Insurance Company v. Escobedo, 80 Cal. App. 3d 610, 616, 145 Cal. Rptr. 785, 787 (1978) (setting forth the purpose for assigned risk plans).

3. CAL. INS. CODE §11624.6. *But see* Martin v. Twentieth Century Insurance Company, 153 Cal. App., 3d 975, 201 Cal. Rptr. 22 (1984) (holding the insurer could not rely on the validity of a waiver in issuing the policy).

4. CAL. INS. CODE §11624.6.

## Insurance; escrow accounts

Insurance Code §§12413, 12413.5 (new); §12389 (amended).  
SB 1550 (Keene); 1984 STAT. CH 1004

Under existing law, all funds deposited with an underwritten title company<sup>1</sup> in connection with any escrow must be deposited in a bank or savings and loan association in a separate trust account.<sup>2</sup> The funds are to be used only to fulfill the terms of the individual escrow account<sup>3</sup> under which the funds were accepted.<sup>4</sup> Moreover, none of the funds are to be used until all the conditions of the escrow are met.<sup>5</sup> Chapter 1004 imposes these fund restrictions on title insurance companies<sup>6</sup> and controlled escrow companies.<sup>7</sup>

Under prior law, bona fide drafts executed by persons who are fully responsible financially could be deemed the equivalent of funds already cleared into the bank or savings and loan association deposit and thus could be disbursed.<sup>8</sup> Chapter 1004 provides that when a draft, other than a share draft, is received and submitted for collection, no title insurance company, controlled escrow company, or underwritten title company may disburse funds from the escrow account for the purposes of the draft until the proceeds of the draft become available for withdrawal as a matter of right<sup>9</sup> from the financial institution<sup>10</sup> to which the instrument has been submitted for collection.<sup>11</sup> Chapter 1004 further provides that when an item,<sup>12</sup> drawn on or issued by an office of a financial institution located in another state, is received and deposited in an escrow account, no title insurance company, controlled escrow company, or underwritten title company may disburse the funds from the escrow account, with respect to the item, until the proceeds of the item are available for withdrawal as a matter of right from the financial institution to which the deposit was made.<sup>13</sup>

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1. CAL. INS. CODE §12340.5 (definition of underwritten title company).

2. *Id.* §12413.5.

3. CAL. INS. CODE §12413(f) (definition of escrow account).

4. *Id.* §12413.5.

5. *Id.*

6. CAL. INS. CODE §12340.4 (definition of title insurance company).

7. *Id.* §12413.5. *Id.* §12340.6 (definition of controlled escrow company).

8. 1983 Cal. Stat. c. 712, §1, at \_\_\_\_ (amending CAL. INS. CODE §12389(b)(1)).

9. CAL. INS. CODE §12413(d) (meaning of available for withdrawal as a matter of right).

10. *Id.* §12413(h) (definition of financial institution).

11. *Id.* §12413(b).

12. *Id.* §12413(g) (definition of item).

13. *Id.* §12413(c).